

# EXHIBIT C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

- - - - - X

THERESA SWEET, et al., on :

behalf of themselves and all : Case No.:

others similarly situated, : 19-cv-03674-WHA

Plaintiffs, :

vs. :

ELISABETH DEVOS, in her :

official capacity as :

Secretary of the United :

States Department of :

Education, et al., :

Defendants. :

- - - - - X

Remote Videotaped Deposition of COLLEEN M. NEVIN

Wednesday, December 9, 2020

9:11 a.m. (EST)

Job No. 332242

Pages: 1 - 268

Reported by: Dana C. Ryan, RPR, CRR

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<p style="text-align: right;">Page 70</p> <p>1 participated in and brought -- maybe even not just</p> <p>2 a lawsuit. Sometimes we're aware that there was</p> <p>3 an investigation that didn't result in a filing of</p> <p>4 a complaint.</p> <p>5 We would reach out to them to ask them,</p> <p>6 you know, what the scope of their investigation</p> <p>7 was, and if, you know, some of them are in the</p> <p>8 process of submitting materials, so we would want</p> <p>9 to know before we adjudicate the cases if they are</p> <p>10 in the process of putting any materials together</p> <p>11 to send to us if that's their intention.</p> <p>12 So we try to do that upfront before we</p> <p>13 adjudicate anything.</p> <p>14 Q What about before this year?</p> <p>15 A We really didn't have communications</p> <p>16 with the AGs until probably last fall, I'd say.</p> <p>17 Q Does BDU ever initiate or request</p> <p>18 another group in the department to initiate a</p> <p>19 further investigation of a school based on common</p> <p>20 evidence that you have?</p> <p>21 So, for instance, if you have -- if you</p> <p>22 have information that a school was misrepresenting</p> <p>23 its job placement rates for criminal justice in</p> <p>24 2010 to 2012, would you ever investigate or ask</p> <p>25 someone to investigate whether they also were</p>	<p style="text-align: right;">Page 72</p> <p>1 A I don't know that I would opine on what</p> <p>2 a proper staffing is for them because it's not my</p> <p>3 unit, but I think it would allow for maybe some</p> <p>4 further exploration on their part. I'm just</p> <p>5 working with what we have at this point, so, you</p> <p>6 know, to the extent that we're already taking up a</p> <p>7 fair amount of their time in terms of the things</p> <p>8 that I had already mentioned.</p> <p>9 Given their very limited resources, we</p> <p>10 haven't had conversations about expanding that.</p> <p>11 Q Again, in terms of what's considered</p> <p>12 among the common evidence, does BDU consider</p> <p>13 evidence that's provided by the schools</p> <p>14 themselves?</p> <p>15 A Yes.</p> <p>16 Q Under what circumstances does BDU</p> <p>17 communicate with a school to get evidence</p> <p>18 regarding borrower defense?</p> <p>19 A Well, currently there are some open</p> <p>20 policy issues or discussions relating to that, but</p> <p>21 in the spring we -- I'm sorry. Can you restate</p> <p>22 your question?</p> <p>23 Q Under -- under what circumstances does</p> <p>24 BDU reach out to a school to ask for evidence</p> <p>25 regarding a borrower defense issue?</p>
<p style="text-align: right;">Page 71</p> <p>1 making similar misrepresentations for other</p> <p>2 programs during that period of time or for that</p> <p>3 same program during other periods of time?</p> <p>4 A Investigations isn't -- investigations</p> <p>5 isn't really staffed to handle that much right</p> <p>6 now, but we, I think, have been -- they're focused</p> <p>7 generally, we know, for the last few years for</p> <p>8 something that is currently ongoing and, you know,</p> <p>9 therefore, potentially going forward.</p> <p>10 So what we're keeping an eye open for</p> <p>11 by way of referring to them is if we see something</p> <p>12 that has happened recently at an open school, you</p> <p>13 know, whether that's something that they would</p> <p>14 look at and I think that that would kind of fall</p> <p>15 within their -- their purview right now.</p> <p>16 In terms of if we know of, like, the</p> <p>17 criminal justice program and whether we would</p> <p>18 refer it for something -- you know, for a school</p> <p>19 that's been closed or, you know, for something</p> <p>20 that happened a long time ago, we probably would</p> <p>21 not.</p> <p>22 Q If investigations were properly</p> <p>23 staffed, is -- would you be able to make those</p> <p>24 kind of requests for investigations into conduct</p> <p>25 that happened in the past?</p>	<p style="text-align: right;">Page 73</p> <p>1 A Yeah. Well, obviously, if the school</p> <p>2 is closed and no longer doing business, there's</p> <p>3 nothing we can do about that.</p> <p>4 If the school is still open, then</p> <p>5 starting this past spring, there were four school</p> <p>6 groups that we had reached out to for two reasons.</p> <p>7 One is to let them know that they were about to</p> <p>8 receive individual applications as part of the</p> <p>9 notification process under the 2016 regulations,</p> <p>10 so really more of just a heads up that their email</p> <p>11 box was about to get flooded with a whole lot of</p> <p>12 applications. But also to request documents that</p> <p>13 we thought would be helpful in our assessment of</p> <p>14 the -- the borrower applications.</p> <p>15 So we had done kind of a preliminary</p> <p>16 review of what the nature of the claims were with</p> <p>17 respect to those schools and had come up with a</p> <p>18 list of documents that we thought would be</p> <p>19 relevant to that -- that fact-finding process.</p> <p>20 Q And what were those four school groups</p> <p>21 that you reached out to in the spring?</p> <p>22 A DeVry, Phoenix, Ashford, I guess,</p> <p>23 depends on how you define "school group."</p> <p>24 Technically speaking, DeVry is a school group and</p> <p>25 a school. Phoenix, I think, really is just a</p>

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1 school. Within a school group, Charlotte School  
2 of Law, and Ashford which is part of Bridgepoint,  
3 I believe.

4 Q So from each of those schools, you  
5 requested a list of documents that you thought  
6 would be helpful to your assessment?

7 A We wrote them a letter, and that letter  
8 included a number of requests, yes.

9 Q Did you also invite them to submit any  
10 other evidence that they wanted you to see?

11 A The -- that's related to what I was  
12 saying in terms of flooding their in-box. So when  
13 they receive an individual borrower's application,  
14 they can respond to that application individually  
15 with evidence, or they could submit something to  
16 us more globally in terms of responses to the  
17 overall applications.

18 Q Okay. You referred to an ongoing  
19 policy debate. Could you describe what you mean  
20 by that?

21 A I don't know if I would call it a  
22 debate, but there's an open question on what that  
23 process will look like going forward in terms of  
24 what the communications to the school will look  
25 like.

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1 Q And who's involved in those  
2 discussions?

3 A OUS and with the assistance of the  
4 Office of General Counsel.

5 Q Does OGC make policy decisions  
6 regarding borrower defense?

7 A I think you'd have to ask them. I  
8 don't really understand exactly what the  
9 relationship is, or it has some folks that kind of  
10 have moved in and out of lane. So I don't know,  
11 as a general proposition, what the answer to that  
12 would be.

13 Q Okay. Whose idea was it or whose  
14 decision was it to reach out to these four schools  
15 in spring 2020?

16 A I don't think it was an idea. I think  
17 it -- my and my senior team's reading of the 2016  
18 regulations is that it requires a fact-finding  
19 process, and in order to do that fact-finding  
20 process for, you know, the circumstances in these  
21 schools, we felt like we needed records from the  
22 school.

23 So -- so I made the decision to -- to  
24 have my team draft those letters and send them.

25 Q Before the 2016 regs went into effect,

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1 did BDU ever contact schools to ask for relevant  
2 evidence?

3 A Before the regs went into effect --  
4 that was late 2018 -- we were just treading water  
5 trying to keep up with Corinthian applications, so  
6 we really weren't even at that point.

7 Q Have -- have any of the four schools  
8 who you reached out to in spring 2020 provided the  
9 documents that you asked for?

10 A All have responded, and some have sent  
11 most or all of what we requested, and I think one  
12 of them may have said that they were sending  
13 something, but I don't know if we ever got it.

14 Q And how is that information used by  
15 BDU?

16 A The documents that they provide?

17 Q Uh-huh. Yes.

18 A We review the evidence regardless of  
19 the source. You know, we might request from them  
20 a program manual that we might otherwise have  
21 gotten in the course of our oversight at FSA or  
22 that might have been provided from an AG's office.

23 So I would look at the nature of the  
24 evidence based -- I don't think it's used  
25 differently in that sense. It's -- you know, it's

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1 what the document purports to be. Obviously, the  
2 source is important to know for the purpose of  
3 kind of veracity of the document, but beyond that  
4 we don't necessarily treat a program manual or,  
5 you know, different kind of advertising material  
6 differently depending on the source.

7 Q So the information you received from  
8 schools is incorporated into the general pool of  
9 evidence that you're considering regarding that  
10 school?

11 A Yes.

12 Q In -- you said that the school has the  
13 option to respond to an application individually.  
14 Is there a mechanism for the borrower to see the  
15 evidence that the school submits in response to  
16 their application?

17 A Not under the 2016 regulations. There  
18 will be for the 2020 regulation.

19 Q Okay. What about the -- does the 2019  
20 regulation have any rule there?

21 A Sorry. So when I say 2020, the 2019  
22 regulation went into effect July 1, 2020.

23 Q Oh, I see.

24 A I refer to that as the 2020 regulation.  
25 So that's the new one.

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<p style="text-align: right;">Page 78</p> <p>1 And just to clarify, the '95 regulation</p> <p>2 is the old regulation. 2016, we refer to as the</p> <p>3 2016 regulation because that's when it was</p> <p>4 published, but it actually went into effect by</p> <p>5 court order in 2018. We still refer to it as the</p> <p>6 2016 regulation.</p> <p>7 Q Okay. Understood.</p> <p>8 Let's switch back for a second to the</p> <p>9 law applicable to -- to claims under the '95 regs.</p> <p>10 So you said that you've just recently developed</p> <p>11 protocols for ITT claims, non-California</p> <p>12 employment-prospect-ITT claims under both the '95</p> <p>13 and 2016 regs; is that correct?</p> <p>14 A That's correct.</p> <p>15 Q Okay. So how would a borrower know</p> <p>16 what law applies to their claim?</p> <p>17 A I'm not sure. Are you asking about the</p> <p>18 letters? I'm not sure I understand.</p> <p>19 Q Yes, in communications to the borrower.</p> <p>20 Do communications to the borrower state</p> <p>21 what law has been applied to their claim?</p> <p>22 A I think the CCI ones reference</p> <p>23 California law. I don't think the non-CCI ones</p> <p>24 state an applicable state law. With respect to</p> <p>25 those applications, though, because either the</p>	<p style="text-align: right;">Page 80</p> <p>1 Order.</p> <p>2 And that was marked as Exhibit 13 in</p> <p>3 the Jones deposition.</p> <p>4 (Exhibit 13 referred to.)</p> <p>5 THE WITNESS: Just to make sure I have</p> <p>6 the right document, it's Defendants' Response to</p> <p>7 August 31, 2020 Order.</p> <p>8 BY MS. ELLIS:</p> <p>9 Q Yes, that's correct.</p> <p>10 A Okay.</p> <p>11 Q So this document, I'll represent to</p> <p>12 you, is a filing in this case where -- where the</p> <p>13 government attached the four types of form denial</p> <p>14 letters, which we've been referring to as forms A,</p> <p>15 B, C and D according to their attachment letters</p> <p>16 here in this document.</p> <p>17 So if you flip to the bottom of page 2</p> <p>18 of the motion which is page 3 of the document,</p> <p>19 there's a heading near the bottom of the page,</p> <p>20 Form of denial letters utilized by the department</p> <p>21 since December 2019.</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Okay. And then at the bottom of the</p> <p>25 page going onto the next page, it lists -- it</p>
<p style="text-align: right;">Page 79</p> <p>1 borrower failed to make an allegation that's</p> <p>2 potentially the kind that could be approved or the</p> <p>3 evidence to support it, so regardless of what law</p> <p>4 you would apply, it's our position that the</p> <p>5 application would be denied.</p> <p>6 So those aren't being denied based on,</p> <p>7 you know, not being able to fulfill a specific</p> <p>8 element of a particular state law or a specific</p> <p>9 element of the 2016 regulation. They're either</p> <p>10 just kind of something that wouldn't get through a</p> <p>11 12(b)(6) analysis or they're just lacking in</p> <p>12 evidence.</p> <p>13 Q Are you talking specifically about ITT</p> <p>14 claims?</p> <p>15 A No. I thought you were referring to</p> <p>16 the letters, so the ones that have gone out so</p> <p>17 far, we haven't issued any denials that were based</p> <p>18 on kind of an application of specific elements of,</p> <p>19 you know, state law where there could be a</p> <p>20 different answer in California versus Nebraska.</p> <p>21 Q Okay. Let's look at the denial</p> <p>22 letters. That is tab -- give me a second. That's</p> <p>23 tab 13 in the hard copies. On the Dropbox, that's</p> <p>24 the bracket number 13 ECF 116, Defendants'</p> <p>25 Response to 8/31. I think that should say 2020</p>	<p style="text-align: right;">Page 81</p> <p>1 describes the purposes of the four different</p> <p>2 letters that are attached as exhibits A, B, C and</p> <p>3 D to the motion.</p> <p>4 So for applications from ITT that have</p> <p>5 been so far denied, which of these four form</p> <p>6 denial letters would they have received?</p> <p>7 A I think it's D. Yes, I think D is the</p> <p>8 one that's non-Corinthian but where there is</p> <p>9 common evidence related to the school.</p> <p>10 Q Okay. So let's flip to form D. That's</p> <p>11 the page 22 of the PDF for those looking at it</p> <p>12 electronically. And then the actual text of it</p> <p>13 starts on page 23 of the PDF. It's document 116-4</p> <p>14 on the ECF stamps at the top of the page.</p> <p>15 A Thank you.</p> <p>16 Q So this is an example of form D, and</p> <p>17 then you can see at the bottom of this first page</p> <p>18 it shows where someone would fill in blanks for</p> <p>19 allegation type, primary school and review</p> <p>20 recommendation reason.</p> <p>21 A Correct.</p> <p>22 Q Okay. Is it the case that review</p> <p>23 recommendation reason is sometimes filled in with</p> <p>24 the phrase failure to state a claim?</p> <p>25 A It's a -- it's a drop-down in our</p>

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<p style="text-align: right;">Page 82</p> <p>1 platform, but it's filled in by my team, and then</p> <p>2 that's used to populate these letters by our</p> <p>3 contractor.</p> <p>4 Q Uh-huh.</p> <p>5 And one of the options in the drop-down</p> <p>6 is failure to state a claim?</p> <p>7 A Correct.</p> <p>8 Q So what -- what does that mean?</p> <p>9 A It's like a 12(b)(6) analysis, does the</p> <p>10 borrower make an allegation that could potentially</p> <p>11 lead to, you know, an illegal case filed in court.</p> <p>12 Is it something that a court would not dismiss on</p> <p>13 a 12(b)(6) motion kind of thing. So an example</p> <p>14 will be does the borrower allege that the school</p> <p>15 made a misrepresentation to the borrower on which</p> <p>16 they relied to, you know, enroll in the school or</p> <p>17 whatever, based -- something along those lines.</p> <p>18 Q How is it determined that an</p> <p>19 application fails to state a claim if it hasn't</p> <p>20 yet been determined what law applies?</p> <p>21 A It's -- the bar is just -- you know, is</p> <p>22 an alleged misrepresentation, generally, would be</p> <p>23 the most common. So, you know, we get</p> <p>24 applications on folks who say my loans were too</p> <p>25 expensive; my school is terrible; my teacher was</p>	<p style="text-align: right;">Page 84</p> <p>1 failure to state a claim and another might be</p> <p>2 denied for insufficient evidence. It depends on</p> <p>3 the nature of the claim and what the borrower</p> <p>4 states for that particular claim.</p> <p>5 Q So you're saying that you -- you can't</p> <p>6 estimate the number of applications that have been</p> <p>7 denied -- that have received a form denial letter</p> <p>8 solely because they failed to state any sort of</p> <p>9 claim?</p> <p>10 A I -- I don't know the number off the</p> <p>11 top of my head, no.</p> <p>12 Q Are there department records that would</p> <p>13 show how many applicants who received form D</p> <p>14 denial letters -- it was based solely on failure</p> <p>15 to state a claim?</p> <p>16 A It's data in our system, so I'm sure</p> <p>17 there's some way to pull that. Yeah, I'm sure</p> <p>18 there's some way to pull it out of our system, but</p> <p>19 I don't know that there's a record existing</p> <p>20 somewhere. I think somebody would have to do some</p> <p>21 kind of a data pull.</p> <p>22 Q So if -- if an allegation was this</p> <p>23 school made job-placement-rate-misrepresentation</p> <p>24 claims, that would not be rejected for failure to</p> <p>25 state a claim?</p>
<p style="text-align: right;">Page 83</p> <p>1 abusive; things that are not borrower</p> <p>2 defense-related issues; sexual harassment by a</p> <p>3 staff member; didn't get the classes I wanted.</p> <p>4 You know, just a whole variety of</p> <p>5 different things that borrowers may include in</p> <p>6 their application, but are not something that are</p> <p>7 of the type that would, you know, provide</p> <p>8 eligibility for borrower defense relief</p> <p>9 potentially.</p> <p>10 Q Do you know how many form D notices</p> <p>11 have been mailed out since this form was --</p> <p>12 started being used?</p> <p>13 A I don't.</p> <p>14 Q Do you have a sense of what percentage</p> <p>15 of claims denied under form D fit the description</p> <p>16 you're giving of someone who doesn't provide any</p> <p>17 allegation that could potentially state a borrower</p> <p>18 defense claim?</p> <p>19 A As to one of the allegations? So, in</p> <p>20 other words, if you see in this letter, there</p> <p>21 are -- I don't know how many are here -- there's</p> <p>22 two on this example, but there could be five</p> <p>23 different allegations in one claim or one</p> <p>24 application, so those would be five separate</p> <p>25 claims, and one of the claims might be denied for</p>	<p style="text-align: right;">Page 85</p> <p>1 A It should not be. I can't say that we</p> <p>2 have never made a mistake, but the protocol would</p> <p>3 be that that would then go to, you know, whether</p> <p>4 there's evidence. So that would not -- the -- the</p> <p>5 claim itself, if it were rejected or if the -- if</p> <p>6 that particular claim was denied, would not be</p> <p>7 denied based on that.</p> <p>8 Q If someone alleged that the school made</p> <p>9 a job-placement-rate-misrepresentation claim, but</p> <p>10 the applicant did not specifically state that they</p> <p>11 relied on that misrepresentation, would that be</p> <p>12 denied for failure to state a claim?</p> <p>13 A I believe so. I'm trying to remember</p> <p>14 the drop-downs and what the available drop-down --</p> <p>15 what the protocol calls for. The -- I believe the</p> <p>16 protocol references lack of reliance, so it</p> <p>17 actually -- that might be an option -- I don't</p> <p>18 recall, though. I'd have to look at the protocols</p> <p>19 to see what -- what the particular entry would be</p> <p>20 that would show up there.</p> <p>21 Q Other than a new protocol that's been</p> <p>22 developed for ITT non-California</p> <p>23 employment-prospects claims, has BDU also</p> <p>24 developed a new form of denial letter to go with</p> <p>25 that protocol, or would claims denied under that</p>

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<p style="text-align: right;">Page 86</p> <p>1 protocol continue to receive form D letters?</p> <p>2 A Well, your question assumes that BDU</p> <p>3 develops the letters, and we -- these are not our</p> <p>4 letters.</p> <p>5 Q Okay. Let me -- let me back up, then,</p> <p>6 to ask more generally about the -- about the</p> <p>7 denial letters.</p> <p>8 So who did develop forms A through D</p> <p>9 denial letters?</p> <p>10 A I think there were a lot of folks</p> <p>11 involved in it. At the time, the crew at Mark</p> <p>12 Brown had wanted my team, the borrower defense</p> <p>13 unit, to focus on adjudications. So there was an</p> <p>14 FSA communications team and our borrower defense</p> <p>15 program management team, which was a new -- new</p> <p>16 group, that were kind of tasked with sharing the</p> <p>17 process for having the letters done.</p> <p>18 And that was approval letters and</p> <p>19 denial letters because that -- there were several</p> <p>20 approval letters, I believe, that were originally</p> <p>21 developed. So it's all kind of done at the same</p> <p>22 time.</p> <p>23 And then they worked with our senior</p> <p>24 leadership at the department and the Office of</p> <p>25 General Counsel on the letters.</p>	<p style="text-align: right;">Page 88</p> <p>1 they finalized the relief methodology or were</p> <p>2 close to finalizing the relief methodology for the</p> <p>3 approvals.</p> <p>4 Q And who did you -- who did you consult</p> <p>5 with about this information that BDU was able to</p> <p>6 provide for the denial letters?</p> <p>7 A Like who asked for input on them?</p> <p>8 Q Yeah.</p> <p>9 A The head of the communications team</p> <p>10 that was working on this was a woman named Nicki</p> <p>11 Meoli. M-E-O-L-I. And we worked closely with</p> <p>12 Chad Schrecengost. I'm going to get the spelling</p> <p>13 wrong on this, I think. S-C-H-R-E-C-E-N-G-O-S-T.</p> <p>14 I'm pretty sure that's wrong, but that's close.</p> <p>15 Q Good effort.</p> <p>16 A And I think those were the two folks at</p> <p>17 FSA who would have asked me or my team for, you</p> <p>18 know, what is this field; how do you we -- what do</p> <p>19 we have to fill out, that kind of thing.</p> <p>20 And then I -- I was also on some calls</p> <p>21 to that effect with GC.</p> <p>22 Q With who?</p> <p>23 A Our Office of General Counsel. I'm</p> <p>24 sorry.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 87</p> <p>1 Q Who ultimately was responsible for</p> <p>2 approving the form denial letters?</p> <p>3 A I can't answer that. I don't know that</p> <p>4 there was one person, but I think Mark Brown would</p> <p>5 probably be a better person to ask because he</p> <p>6 would have interacted with the folks at LBJ on</p> <p>7 whether they were given the green light to</p> <p>8 proceed.</p> <p>9 Q How did you find out about the form</p> <p>10 denial letters?</p> <p>11 A About their existence?</p> <p>12 Q Yes.</p> <p>13 A I was always kind of kept in the loop</p> <p>14 because my team -- the data that shows up -- so</p> <p>15 all of these kind of highlighted areas -- it's</p> <p>16 gray on mine, but I think the original versions</p> <p>17 are yellow highlights. Those are fields that are</p> <p>18 in our platform. So, you know, we were kind of in</p> <p>19 a consulting role for what available fields could</p> <p>20 be pulled into the letter.</p> <p>21 So I was -- I was on a number of the</p> <p>22 calls and emails and things along those lines to</p> <p>23 get the letters finalized, so I don't know when I</p> <p>24 first became aware -- I mean, I became aware that</p> <p>25 they were drafting them around the time of when</p>	<p style="text-align: right;">Page 89</p> <p>1 MR. MERRITT: I'll note for the record</p> <p>2 that Chad Schrecengost is listed in defendants'</p> <p>3 response, interrogatory number 2, for spelling and</p> <p>4 whatever else.</p> <p>5 BY MS. ELLIS:</p> <p>6 Q Okay. But then beyond Meoli,</p> <p>7 Schrecengost and some people from OGC, you don't</p> <p>8 know who was actually involved in the drafting or</p> <p>9 approval of these letters?</p> <p>10 A You broke up a little bit there. I'm</p> <p>11 sorry, Rebecca. Could you repeat that again?</p> <p>12 Q No problem.</p> <p>13 So besides Meoli, Schrecengost and</p> <p>14 certain people from OGC, you don't know who else</p> <p>15 was involved in drafting or approving the letters?</p> <p>16 A Well, I think those are two different</p> <p>17 things, the drafting and the approving. And I</p> <p>18 don't know all of the people who had a hand in</p> <p>19 drafting the letter. I know it was a weeks' long</p> <p>20 process, so I'm sure there were a lot of people</p> <p>21 who worked on them.</p> <p>22 And then I was not involved in, you</p> <p>23 know, kind of the final sign-off on it, so as I</p> <p>24 said, I think Mark Brown would probably be the</p> <p>25 best person to ask that.</p>



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<p style="text-align: right;">Page 90</p> <p>1 Q Do you think he would know who was</p> <p>2 involved in the final sign-off process?</p> <p>3 A I would think so. That would be the</p> <p>4 typical process, yeah.</p> <p>5 Q Okay. You said you believe it took a</p> <p>6 matter of weeks to develop these form letters.</p> <p>7 A That's my recollection, yes.</p> <p>8 Q Do you know what -- what made it</p> <p>9 complicated or time-consuming to put these</p> <p>10 together?</p> <p>11 A I don't know.</p> <p>12 Q Is there anywhere in -- in this form D</p> <p>13 letter where the applicable law would be filled</p> <p>14 in?</p> <p>15 A I mean, there's an applicable law</p> <p>16 section. It doesn't -- I think this letter is for</p> <p>17 both. I'm sorry. I'm just reading. It's been a</p> <p>18 while.</p> <p>19 Q Go ahead.</p> <p>20 A (Witness reviews document.)</p> <p>21 Yeah, it looks like this is for both</p> <p>22 regulations. The applicable state law is not in</p> <p>23 here for the 2016 regulation. Obviously, it's a</p> <p>24 federal standard, so there wouldn't be anything</p> <p>25 along this line.</p>	<p style="text-align: right;">Page 92</p> <p>1 that that wasn't necessary because it was argued</p> <p>2 that regardless of what state law might have</p> <p>3 applied that the application would be denied.</p> <p>4 Q So I'd like to look at an example of a</p> <p>5 completed form D denial letter.</p> <p>6 MS. ELLIS: So this will be behind tab</p> <p>7 15 in your hard copies. On the Dropbox, the</p> <p>8 bracket 15 ECF 129-1, Connor declaration. This</p> <p>9 was marked as Exhibit 15 in the deposition of</p> <p>10 Diane Jones.</p> <p>11 (Exhibit 15 referred to.)</p> <p>12 BY MS. ELLIS:</p> <p>13 Q And there's a number of attachments</p> <p>14 here. I'm looking at the affidavit of Theresa</p> <p>15 Sweet that begins at page 24 of the PDF, page 24</p> <p>16 of the ECF filing.</p> <p>17 A Okay.</p> <p>18 Q And then attached to -- further</p> <p>19 attached to the affidavit of Theresa Sweet all the</p> <p>20 way down at page 51 of the document is a -- an</p> <p>21 example of form D. This is the form D that</p> <p>22 Theresa Sweet, the named plaintiff in this case,</p> <p>23 received.</p> <p>24 A That's exhibit B to her affidavit?</p> <p>25 Q Exhibit B to her declaration.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q Were you ever involved in any</p> <p>2 discussions about whether the applicable state law</p> <p>3 under the '95 regs would be listed in a denial</p> <p>4 letter?</p> <p>5 A There was a conversation about that,</p> <p>6 and the -- that was not necessarily populated in</p> <p>7 all of the cases for the reason I mentioned</p> <p>8 before, which is that the cases that were going</p> <p>9 out with this letter -- this letter was drafted</p> <p>10 after a bunch of cases were already adjudicated</p> <p>11 and not the other way around.</p> <p>12 And, so, the intent was to send out --</p> <p>13 actually, I don't know if it was this letter or C</p> <p>14 because they're pretty similar. I think it might</p> <p>15 have been C actually that I'm thinking of.</p> <p>16 But I -- my recollection is that there</p> <p>17 was discussion of whether or not to include state</p> <p>18 law as a field but that would have required more</p> <p>19 time for my team to go back and, you know, fill in</p> <p>20 any data that needed to -- with respect to state</p> <p>21 law where it really wasn't being denied because of</p> <p>22 state law; it was being denied for the reasons</p> <p>23 that I mentioned before.</p> <p>24 Q Uh-huh.</p> <p>25 A And, so, I think the conclusion was</p>	<p style="text-align: right;">Page 93</p> <p>1 A Yeah. Got it.</p> <p>2 Q Okay. So if you -- if you go down to</p> <p>3 the second page of this attachment, there's that</p> <p>4 section as we were just looking at in the form</p> <p>5 denial where it lists the allegations and then the</p> <p>6 reasons for denial.</p> <p>7 Allegation 1: Employment Prospects.</p> <p>8 You allege that Brooks Institute engaged in</p> <p>9 misconduct related to employment prospects. This</p> <p>10 allegation fails for the following reason(s):</p> <p>11 Failure to state a legal claim.</p> <p>12 Is there any way that we could tell</p> <p>13 from reading this letter what was wrong with</p> <p>14 Theresa Sweet's employment-prospects allegations?</p> <p>15 A Well, clearly, all we can tell from</p> <p>16 this is my team concluded that their -- the</p> <p>17 specific claim with respect to the employment</p> <p>18 prospects did not state a legal claim. That's</p> <p>19 what's in here.</p> <p>20 Q And is that also the case with regard</p> <p>21 to allegations 2 and 3?</p> <p>22 A That is the -- the reason that's</p> <p>23 included, right.</p> <p>24 Q We discussed earlier that it should be</p> <p>25 unlikely that an allegation of employment</p>



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<p style="text-align: right;">Page 94</p> <p>1 prospects would be denied for failure to state a</p> <p>2 legal claim.</p> <p>3 Is there any way to tell from this</p> <p>4 letter why --</p> <p>5 A Sorry. I --</p> <p>6 Q Wait.</p> <p>7 A You broke up again. And I don't know</p> <p>8 if it's a problem on my end or if it's other folks</p> <p>9 or -- I missed the first half of the question,</p> <p>10 though. Would you please repeat it?</p> <p>11 Q Okay. We talked earlier that an</p> <p>12 allegation of misrepresentation of employment</p> <p>13 prospects should probably be unlikely to be denied</p> <p>14 for the reason of failure to state a legal claim.</p> <p>15 Is there any way to tell from this</p> <p>16 letter why her particular allegations were</p> <p>17 insufficient?</p> <p>18 MR. MERRITT: Objection to the</p> <p>19 characterization of the prior testimony.</p> <p>20 BY MS. ELLIS:</p> <p>21 Q You can answer.</p> <p>22 A I'm not sure I can. Can you rephrase?</p> <p>23 Q It's all right. I'll move on.</p> <p>24 Let's move down to allegations 4 and 5.</p> <p>25 The letter states that these allegations were</p>	<p style="text-align: right;">Page 96</p> <p>1 A That's always been a policy in borrower</p> <p>2 defense going back to 2016; that one borrower's</p> <p>3 statement without corroboration would not be</p> <p>4 sufficient to -- to approve an application.</p> <p>5 Q What sort of documentation does BDU</p> <p>6 expect borrowers to provide in order to rise to</p> <p>7 the level of sufficient evidence?</p> <p>8 A I would take issue with the way you</p> <p>9 framed that. We don't have any particular</p> <p>10 expectation one way or another. We're just</p> <p>11 adjudicating based on the evidence in front of us,</p> <p>12 so, you know, whether that comes from the borrower</p> <p>13 or from some other source, we make an assessment</p> <p>14 of the evidence. But I don't have a particular</p> <p>15 expectation one way or the other.</p> <p>16 Q Does the borrower defense application</p> <p>17 state that the applicant must submit corroborating</p> <p>18 materials in order for their claim to be</p> <p>19 considered?</p> <p>20 A Which application are you referring to?</p> <p>21 Q I'm referring to the standard form</p> <p>22 application that's available on the department's</p> <p>23 Web site.</p> <p>24 A I don't recall exactly what the wording</p> <p>25 is. I know it requires the borrower to provide</p>
<p style="text-align: right;">Page 95</p> <p>1 rejected for insufficient evidence; is that</p> <p>2 correct?</p> <p>3 A That's what it says, yes.</p> <p>4 Q Is there any way to tell from this</p> <p>5 letter what about Theresa Sweet's evidence was</p> <p>6 insufficient?</p> <p>7 A Well, your -- I think you're assuming</p> <p>8 that there was evidence, which I don't know from</p> <p>9 this, necessarily, but, you know, it could be that</p> <p>10 there was no evidence, but the drop-down -- the</p> <p>11 available drop-down is insufficient evidence. So</p> <p>12 the conclusion was that whatever it was that was</p> <p>13 included was insufficient to support the claim.</p> <p>14 Q Are borrowers' own statements on their</p> <p>15 applications considered evidence?</p> <p>16 A They're -- they're evidence. The</p> <p>17 statement in and of itself without any</p> <p>18 corroborating evidence would not be sufficient to</p> <p>19 approve an application, though.</p> <p>20 Q The statements on -- of our defense</p> <p>21 application are made under the penalties of</p> <p>22 perjury; is that correct?</p> <p>23 A Yes.</p> <p>24 Q So why wouldn't the borrower's sworn</p> <p>25 statement be considered sufficient evidence?</p>	<p style="text-align: right;">Page 97</p> <p>1 detailed information, encourages the borrower to</p> <p>2 provide supporting evidence, but I don't remember</p> <p>3 exactly what the language is.</p> <p>4 Q Do you know who originally set the</p> <p>5 policy that the borrower's statement alone would</p> <p>6 be insufficient to make out a borrower defense</p> <p>7 claim?</p> <p>8 A I don't, but that was the policy when I</p> <p>9 joined in October of 2016.</p> <p>10 Q Is that a written policy?</p> <p>11 A It's in -- I remember seeing documents</p> <p>12 somewhere along the way back at that point, so I</p> <p>13 guess it depends on what you mean by a written</p> <p>14 policy, but it's -- it's recorded in -- I can</p> <p>15 remember PowerPoints or something. I'm sure</p> <p>16 there's other documentation going back that far.</p> <p>17 Q Do you know if that PowerPoint has been</p> <p>18 provided for production in this case?</p> <p>19 A I don't know.</p> <p>20 Q Would that be considered a policy</p> <p>21 decision?</p> <p>22 A Yes.</p> <p>23 Q So that's a decision that would not be</p> <p>24 made by someone at FSA?</p> <p>25 A That's correct.</p>

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98 to 101

<p style="text-align: right;">Page 98</p> <p>1 Q Looking back at tab 15, Exhibit 15, the</p> <p>2 first page of Theresa Sweet's denial letter states</p> <p>3 that she was enrolled at Brooks Institute; is that</p> <p>4 correct?</p> <p>5 A I'm sorry. You're on her affidavit</p> <p>6 now?</p> <p>7 Q Yeah. I'm sorry. It's the first page</p> <p>8 of the denial letter which is page 51 of the ECF</p> <p>9 filing.</p> <p>10 A Yes, it says she was enrolled at Brooks</p> <p>11 Institute.</p> <p>12 Q Yes.</p> <p>13 Is Brooks Institute a school for which</p> <p>14 BDU has common evidence?</p> <p>15 A If memory serves, Brooks Institute is</p> <p>16 part of the CEC school group, if I am remembering</p> <p>17 correctly. I could be wrong on that, but I think</p> <p>18 it is. And we do have common evidence relating to</p> <p>19 CEC. Whether or not it specifically relates to</p> <p>20 Brooks, I don't recall.</p> <p>21 Q Let's look back at your declaration,</p> <p>22 tab 21, marked as Exhibit 21. And I'm looking at</p> <p>23 paragraph 68 which is on page 16.</p> <p>24 A Okay.</p> <p>25 Q Could you read the second sentence of</p>	<p style="text-align: right;">Page 100</p> <p>1 Q So the review and analysis of evidence</p> <p>2 relating to Brooks Institute is now complete?</p> <p>3 A No, but we've done the preliminary</p> <p>4 analysis that I referred to earlier more generally</p> <p>5 in terms of the scope of the evidence. So we must</p> <p>6 have included that whatever time period that she</p> <p>7 attended or her program or whatever it is that we</p> <p>8 concluded the scope of Brooks is, that she falls</p> <p>9 outside that scope.</p> <p>10 Q Whose decision was it to take an</p> <p>11 approach to borrower defense adjudication where</p> <p>12 applications would be ruled out by common evidence</p> <p>13 rather than ruled in by common evidence?</p> <p>14 A Well, in 2019, we were directed to move</p> <p>15 forward at a very accelerated pace, and so, you</p> <p>16 know, there were a lot of discussions about how to</p> <p>17 do that and how to get through the backlog in</p> <p>18 2020. They wanted all of the cases adjudicated in</p> <p>19 2020.</p> <p>20 And the only way to hit the metrics</p> <p>21 that were required of us were to focus on cases</p> <p>22 that had established protocols, so the same ones</p> <p>23 that we were talking about earlier, and cases</p> <p>24 where either there was no common evidence, which</p> <p>25 we did those first, or where we could assess what</p>
<p style="text-align: right;">Page 99</p> <p>1 that paragraph, please?</p> <p>2 A Sure. The second sentence?</p> <p>3 Q Of paragraph 68, beginning with,</p> <p>4 Additionally?</p> <p>5 A Additionally, BDU has initiated its</p> <p>6 review and analysis of the evidence relating to</p> <p>7 ITT (including campuses outside of California),</p> <p>8 DeVry University and Brooks Institute but has not</p> <p>9 had available staff to complete that work and</p> <p>10 proceed to adjudicate applications from borrowers</p> <p>11 who attended those schools.</p> <p>12 Q So does that refresh your recollection</p> <p>13 on whether there's common evidence on Brooks</p> <p>14 Institute?</p> <p>15 A Yes.</p> <p>16 Q If the review and analysis of common</p> <p>17 evidence for Brooks Institute was not yet</p> <p>18 complete, how could Theresa Sweet's application be</p> <p>19 denied for insufficient evidence?</p> <p>20 A Well, your question, I think, is</p> <p>21 premised on a timing -- you know, if it's not</p> <p>22 true, it's not true. This was in November of</p> <p>23 2019, and I don't know what the date of her letter</p> <p>24 is. July of 2020. So we were in a different</p> <p>25 stage when we issued her letter.</p>	<p style="text-align: right;">Page 101</p> <p>1 the scope of the common evidence was and then move</p> <p>2 forward on adjudicating other cases.</p> <p>3 So it was kind of a sequencing issue so</p> <p>4 that we could continue to meet the -- the weekly</p> <p>5 numbers that we needed to meet in order to</p> <p>6 adjudicate the cases.</p> <p>7 In a perfect world, we would review all</p> <p>8 of the evidence relating to the school before</p> <p>9 adjudicating a single case, but if that were the</p> <p>10 case, then we probably would not be issuing</p> <p>11 decisions for most of 2020 because, you know, to</p> <p>12 the extent that, you know, most of the cases that</p> <p>13 are left right now, at least potentially, are</p> <p>14 related to some common evidence or the borrower</p> <p>15 provided substantial evidence of their own or at</p> <p>16 least some evidence that could potentially support</p> <p>17 the claim.</p> <p>18 So it's a -- it was just a sequencing</p> <p>19 issue that been ordered to the numbers. That's</p> <p>20 the way we moved forward.</p> <p>21 Q Who set the target numbers?</p> <p>22 A The secretary set the elimination of</p> <p>23 the backlog, and my understanding is that, based</p> <p>24 on the numbers that were pending at the time, that</p> <p>25 Mark Brown just did the math essentially and set a</p>

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1 target of us for 5,000 adjudications per week.

2 Q But it was the secretary who said this

3 number of cases in the backlog must be eliminated

4 in 2020?

5 A I don't know that she said anything

6 about the number. I think she just said -- it was

7 actually eliminate the backlog and adjudicate any

8 new case that comes in within 90 days.

9 Q And when did that directive come down?

10 A That specific directive, I believe, was

11 the fall of 2019, but there were already

12 conversations to that effect earlier in 2019.

13 Q I'm sorry. It glitched a little.

14 What was earlier in 2019?

15 A There were already conversations about

16 elimination of the backlog in early 2019. The

17 specific directive of elimination of the backlog

18 and adjudicating cases within 90 days of receipt,

19 I believe, was in the fall of 2019.

20 Q And who are the conversations among

21 that were earlier in 2019 about elimination of the

22 backlog?

23 A Well, I don't know who over in LBJ,

24 but, certainly, Mark Brown made all of us within

25 FSA that are related to BD aware, so that included

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1 Robin Minor, the then chief enforcement officer

2 Jeffrey Appel, the -- I'm trying to think. There

3 were other policy folks that were involved because

4 they were working on the relief methodology, so,

5 particularly, it was communicated to FSA to just

6 get it done, essentially.

7 Q So once that directive came down, whose

8 decision was it about how to approach the

9 sequencing of which claims would get adjudicated

10 first?

11 A Well, it wasn't really a point in time.

12 I know initially there was a lot of interest in --

13 there's always been a lot of interest in getting

14 through the Corinthian cases, so that was one of

15 the big priorities.

16 But, then, I know some of the folks

17 over in LBJ wanted us to do ITT next, and I -- at

18 the time, we had five full-time and one part-time

19 attorney, so we just didn't have the bandwidth to

20 hit any kind of numbers and review the volume of

21 evidence that we had on ITT because I think we

22 have not quite a million pages of records, but

23 there was a lot of documents that we had, that we

24 weren't in a position to adjudicate the cases

25 because we were pretty confident that there were

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1 documents in there that would support other claims

2 that we just didn't know what they were or where

3 they were.

4 So I pushed back on that and there were

5 a lot of conversations about what else could be

6 done, and, you know, one of the things that could

7 be done was first the cases that didn't have

8 common evidence and then the cases where the

9 common evidence didn't seem to be related to those

10 cases, so that's kind of how it evolved.

11 Q For the cases that didn't have common

12 evidence, what would a borrower need to provide in

13 order to be eligible for relief?

14 A I can't answer that hypothetically. It

15 really depends on the claim.

16 Q Are -- are the people who are reviewing

17 individual applications given any instructions on

18 how to assess whether a borrower has provided

19 enough to support their claim?

20 A They're not really making an assessment

21 of -- they're not weighing evidence. They're, you

22 know, issue spotting and flagging cases that have

23 something that could potentially warrant approval.

24 So it's a very low bar at that review stage.

25 And, so, the junior attorney, if they

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1 think there's anything that could lead at all to a

2 possibility of approval, they're supposed to

3 escalate it to one of the senior attorneys.

4 So those cases are all supposed to be

5 set aside.

6 Q Are they given written instructions on

7 what to look for in order to set aside an

8 application?

9 A They're trained on that. The protocols

10 to some extent include that, but there's also --

11 you know, when new attorneys come on, we do a full

12 week of training, and then they go through kind of

13 a probationary period where every case that they

14 adjudicate gets adjudicated by somebody more

15 senior who, you know, walks them through what is

16 or isn't something that states a claim or what is

17 or isn't something that would potentially support

18 approval that they should be setting aside.

19 So they get fairly extensive training

20 on that.

21 MS. ELLIS: Okay. Let's take a

22 five-minute break.

23 THE VIDEOGRAPHER: All parties agree to

24 go off the record?

25 MR. MERRITT: Agree.

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110 to 113

<p style="text-align: right;">Page 110</p> <p>1 Letter A is the letter that was used for people  2 who only alleged a job-placement-rate claim.  3 There were job-placement-rate claims that were  4 adjudicated late 2017 to 2018, and there was a  5 letter that met that same criteria, essentially,  6 in terms of who it would go out to that was a  7 different letter.  8 Q Who drafted that letter, that form  9 letter?  10 A I believe we did. I think it was  11 edited by OGC, but I know my team did the initial  12 draft, I believe.  13 Q And it contained basically the same  14 information that's now in form denial A?  15 A I don't remember to be honest with you.  16 I mean, it was intended to address the same  17 claims, but I don't remember exactly what the  18 contents were in that one versus this one.  19 Q Before form denials B, C and D started  20 being used, had any claims other than Corinthian  21 job-placement claims been denied?  22 A In terms of denied, meaning just not  23 sent out?  24 Q Meaning had any borrowers been notified  25 of the denial of their claims other than CCI JPR</p>	<p style="text-align: right;">Page 112</p> <p>1 in 2017 to 2018, no denials went out.  2 Q All right. Thank you.  3 I'm going to back up in time a little  4 bit back to 2017. When the new administration  5 came in in January '17, did you have any  6 discussions with the transition team about  7 borrower defense?  8 MR. MERRITT: Objection as beyond the  9 scope.  10 MS. ELLIS: Are you instructing the  11 witness not to answer?  12 MR. MERRITT: You can answer that  13 question. I just do want to note that that is not  14 related to one of the topics the court has  15 authorized discovery on, so . . .  16 MS. ELLIS: Well, I disagree, and if  17 you'd like to move to strike after today, you can  18 feel free to.  19 MR. MERRITT: Okay. You can answer  20 that question, but . . .  21 THE WITNESS: Yes.  22 BY MS. ELLIS:  23 Q So did you have any discussions about  24 borrower defense with the Trump transition team in  25 January, February of 2017?</p>
<p style="text-align: right;">Page 111</p> <p>1 applicants?  2 A There were two denials issued in 2017,  3 summer of 2017, I think.  4 Q Two denials total, not two schools?  5 A Two -- two individuals, yeah.  6 Q Did they receive individual denial  7 letters, or was there a form in place?  8 A They were individual letters.  9 Q Okay.  10 A You froze again there for half a  11 second. Did you ask me if it was a form?  12 Q Yeah. You -- you froze as well.  13 Did you say that they got individual  14 denial letters?  15 A They received individual denial  16 letters, yes.  17 Q Okay. And other than those two  18 individuals, no other borrowers were notified of  19 the denial of their claims until forms B, C and D  20 started going out?  21 A Other than --  22 Q Other than Corinthian JPR?  23 A Yes, making sure I understand your  24 question. Other than two individual denials in  25 summer of 2017 and the job-placement-rate denials</p>	<p style="text-align: right;">Page 113</p> <p>1 A Yes.  2 Q Who did you discuss that with?  3 A Oh. Well, there was the -- a beachhead  4 team and a landing team. I can't remember which  5 was which. But there was, you know, the team that  6 came in prior to the inauguration, and we had  7 meetings with them, and then there was a team that  8 came in after that, and we had meetings with them.  9 Q So what did you talk about with members  10 either of the beachhead team or the landing team  11 with regard to borrower defense?  12 MR. MERRITT: Objection: beyond the  13 scope. I'm going to instruct not to answer to  14 enforce the limitation order by the court.  15 MS. ELLIS: I don't believe that's  16 consistent with the judge's standing order on  17 depositions.  18 MR. MERRITT: It's consistent with  19 Federal Rule of Civil Procedure 30(c)(2).  20 MS. ELLIS: Can we talk about this off  21 the record?  22 MR. MERRITT: Okay.  23 THE VIDEOGRAPHER: We are now off the  24 record. The time is 16:56 UTC.  25 (Recess -- 11:57 a.m.)</p>

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130 to 133

<p style="text-align: right;">Page 130</p> <p>1 BY MS. ELLIS:</p> <p>2 Q Is this a document that you've seen</p> <p>3 before?</p> <p>4 A Yes.</p> <p>5 Q And this is a memorandum recommending</p> <p>6 the -- the discharge of approximately 16,000 loans</p> <p>7 that have been adjudicated before January 20th,</p> <p>8 2017; is that correct?</p> <p>9 A That's correct.</p> <p>10 Q If you look at the last page, please,</p> <p>11 this document is signed by Secretary DeVos and</p> <p>12 under the other/comment section she wrote, With</p> <p>13 extreme displeasure.</p> <p>14 Is that accurate?</p> <p>15 A That's what she wrote.</p> <p>16 Q When did you first see this document?</p> <p>17 A It was later. It was quite a bit</p> <p>18 later. I don't remember exactly. It might have</p> <p>19 been in even 2018 or later.</p> <p>20 Q What did you take the Secretary's</p> <p>21 comment to mean?</p> <p>22 A That she was not happy to be signing</p> <p>23 off on discharges for the previously</p> <p>24 (indiscernible) cases or the loans related to the</p> <p>25 previously (indiscernible) cases.</p>	<p style="text-align: right;">Page 132</p> <p>1 So if a case were denied in total, then</p> <p>2 the servicers have to have instructions for how to</p> <p>3 take the borrower out of forbearance. There were</p> <p>4 discussions going on -- I don't know if it was</p> <p>5 this early, but in 2017 about, you know, whether</p> <p>6 there would be some kind of an interest credit</p> <p>7 because some of these borrowers' claims had been</p> <p>8 pending for a while, so there was some</p> <p>9 conversation about that.</p> <p>10 So long story short, we weren't -- we</p> <p>11 weren't holding off on issuing a whole lot of</p> <p>12 denials in early 2017 because there weren't that</p> <p>13 many that we had ready to send out at that point.</p> <p>14 Q At that time, were you told to stop</p> <p>15 developing memoranda or protocols for additional</p> <p>16 categories of claims other than the Corinthian and</p> <p>17 ITT protocols that were already in place?</p> <p>18 A We were told to stop seeking approval</p> <p>19 for such things, but we weren't told to stop</p> <p>20 reviewing evidence, that kind of thing.</p> <p>21 So that work continued, but we weren't</p> <p>22 staffed at the level that would have allowed us to</p> <p>23 develop a whole lot of new review protocols at</p> <p>24 that point anyway.</p> <p>25 Q So you weren't -- you weren't</p>
<p style="text-align: right;">Page 131</p> <p>1 Q Were you aware of the secretary</p> <p>2 expressing displeasure about BDU's adjudication of</p> <p>3 borrower defense applications, otherwise?</p> <p>4 MR. MERRITT: Objection: beyond the</p> <p>5 scope.</p> <p>6 MS. ELLIS: Can the witness answer?</p> <p>7 MR. MERRITT: Can you explain how it's</p> <p>8 relevant for one of the topics?</p> <p>9 MS. ELLIS: It's relevant to the</p> <p>10 reasons for the delay.</p> <p>11 MR. MERRITT: That's not one of the</p> <p>12 topics.</p> <p>13 MS. ELLIS: I'll move on.</p> <p>14 BY MS. ELLIS:</p> <p>15 Q In the spring of 2017 when -- when you</p> <p>16 were told that no more approvals would be</p> <p>17 processed, was it also your understanding that no</p> <p>18 denials would be processed?</p> <p>19 A Yes, but we weren't really positioned</p> <p>20 to issue denials at that point. As I mentioned,</p> <p>21 there's kind of a -- it's not just sending out a</p> <p>22 notice which, you know, it's not just drafting a</p> <p>23 letter. We also have to have requirements with</p> <p>24 the servicers set up so that they know how to</p> <p>25 handle it.</p>	<p style="text-align: right;">Page 133</p> <p>1 developing protocols during that period, but you</p> <p>2 were reviewing evidence?</p> <p>3 A Yes.</p> <p>4 Q And what -- what was the result of --</p> <p>5 of that review? Was it -- was it memorialized in</p> <p>6 any way other than in a application-review</p> <p>7 protocol?</p> <p>8 A We didn't even get to the review</p> <p>9 protocols at that point. A lot of 2017 we spent,</p> <p>10 you know, a fair amount of time working on both</p> <p>11 the IG review, the development of a system because</p> <p>12 we've been working off of, you know, I don't know</p> <p>13 how many -- I think over a thousand Excel</p> <p>14 spreadsheets. There was no system.</p> <p>15 So that was my biggest priority when I</p> <p>16 came in, in terms of operations, was to -- to</p> <p>17 develop some kind of a system that we could use so</p> <p>18 that we could track the cases and pull data and do</p> <p>19 reports and things like that.</p> <p>20 So there was a lot of work going on</p> <p>21 with that in 2017, and there were just a number of</p> <p>22 different kind of moving parts operationally that</p> <p>23 we were working on so that we were better</p> <p>24 positioned to move out once we got the green light</p> <p>25 to move forward, whatever that looked like.</p>

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<p style="text-align: right;">Page 162</p> <p>1 A Yes. The -- that didn't happen,</p> <p>2 obviously. I believe the -- that was to coincide</p> <p>3 with -- no, I'm sorry. I'm trying to remember the</p> <p>4 timeline here. It was a decision to hold off, and</p> <p>5 I don't know if it was this particular time,</p> <p>6 but -- I'm not sure. I'm sorry.</p> <p>7 Q As of August 2019, had the form A</p> <p>8 through D denial letters been finalized?</p> <p>9 A No, they had not. In fact, I don't --</p> <p>10 I don't know if they even started.</p> <p>11 Q Was the -- was the ongoing development</p> <p>12 of those letters one of the reasons why denial</p> <p>13 decisions did not resume by mid-September?</p> <p>14 A No, they were held until we had the</p> <p>15 approval -- the (audio distortion) approvals which</p> <p>16 was tied to the relief methodology.</p> <p>17 Q So does it follow then that issuance of</p> <p>18 approvals were scheduled to resume by</p> <p>19 mid-September 2019?</p> <p>20 A Well, like I said, I didn't draft this</p> <p>21 and I don't know who did, but it may have been in</p> <p>22 connection with whether or not to hold them. I'm</p> <p>23 guessing, so I really -- I don't know.</p> <p>24 Q Okay. So going -- going back to your</p> <p>25 declaration, looking at paragraph 66, could you</p>	<p style="text-align: right;">Page 164</p> <p>1 as the chief operating officer, he was very</p> <p>2 focused on the backlog, the issues that were kind</p> <p>3 of keeping us from getting through the backlog,</p> <p>4 and how do we -- how do we eliminate the backlog.</p> <p>5 So almost from the get-go I would say --</p> <p>6 THE COURT REPORTER: I'm sorry. I'm</p> <p>7 sorry. You cut out.</p> <p>8 THE WITNESS: I think --</p> <p>9 THE COURT REPORTER: Excuse me. You</p> <p>10 cut out on me. Right after you said, Really, as</p> <p>11 soon as Mark Brown started as the chief operating</p> <p>12 officer, he was very focused on the backlog, the</p> <p>13 issues that were kind of keeping us from getting</p> <p>14 through the backlog, and how do we -- how do we</p> <p>15 eliminate the backlog, and then you distorted on</p> <p>16 me. Sorry.</p> <p>17 THE WITNESS: Okay. I don't think I</p> <p>18 said anything helpful after that so -- and I don't</p> <p>19 remember exactly what I said.</p> <p>20 But, yeah, that was his focus so I</p> <p>21 guess it was -- you know, when he started at that</p> <p>22 period of time in February, March 2019, that he</p> <p>23 started asking about it, and probably very soon</p> <p>24 thereafter, you know, started pushing us to hit</p> <p>25 numbers and, you know, have to report on it very</p>
<p style="text-align: right;">Page 163</p> <p>1 read the first sentence of paragraph --</p> <p>2 A Sorry. Sixty-six?</p> <p>3 Q Yes, 66 at the top of page 16.</p> <p>4 Could you read the first sentence,</p> <p>5 please?</p> <p>6 A Because BDU has been instructed to</p> <p>7 maximize the number of applications adjudicated</p> <p>8 per week, the streamlined JPR claims have been</p> <p>9 prioritized. For the same reason, BDU also has</p> <p>10 focused on application from borrowers who did not</p> <p>11 provide any evidence and who attended schools for</p> <p>12 which BDU is not aware of evidence that would</p> <p>13 support the approval of the applications.</p> <p>14 Q Okay. So this is circling back to</p> <p>15 something we talked about early on, but who made</p> <p>16 the decision to maximize the number of</p> <p>17 applications adjudicated per week?</p> <p>18 A That was the direction that we were</p> <p>19 given from the department leadership, and it was</p> <p>20 carried out by the chief operating officer and his</p> <p>21 very clear mandate to me.</p> <p>22 Q When did you receive this instruction</p> <p>23 to maximize the number of applications adjudicated</p> <p>24 per week?</p> <p>25 A Really, as soon as Mark Brown started</p>	<p style="text-align: right;">Page 165</p> <p>1 regularly.</p> <p>2 I'd say no later than the fall of 2019,</p> <p>3 but it might have been a little earlier than that,</p> <p>4 too.</p> <p>5 BY MS. ELLIS:</p> <p>6 Q Did the -- did the number of --</p> <p>7 A (Inaudible.)</p> <p>8 Q I'm sorry. What?</p> <p>9 A Sorry. Everybody just froze on me</p> <p>10 there, so -- I don't know if it's my connection</p> <p>11 or --</p> <p>12 MR. MERRITT: It might be yours, I</p> <p>13 think, from my perspective at least you're --</p> <p>14 THE WITNESS: Can you hear me?</p> <p>15 MR. MERRITT: Now, yes.</p> <p>16 BY MS. ELLIS:</p> <p>17 Q Okay. Can you hear me?</p> <p>18 A I can hear you, yep.</p> <p>19 Q Okay. We'll keep going and see what</p> <p>20 happens.</p> <p>21 A Yep.</p> <p>22 Q So did -- did the number of</p> <p>23 applications adjudicated become part of FSA's</p> <p>24 annual performance metrics this year?</p> <p>25 A I believe so, but, yes.</p>



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210 to 213

<p style="text-align: right;">Page 210</p> <p>1 A Yes.</p> <p>2 Q So this was a project you were working</p> <p>3 on in anticipation of when processing began again?</p> <p>4 A Yeah. Yeah.</p> <p>5 Q So for all of the borrowers who have</p> <p>6 received form C or D denial letters since the end</p> <p>7 of 2019, and those are the ones for non-Corinthian</p> <p>8 claims, is it fair to say that none of -- none of</p> <p>9 those applications had any evidence weighed in</p> <p>10 relation to their claim?</p> <p>11 A Unless it was an ITT case for which we</p> <p>12 had a protocol, so that would have been -- the</p> <p>13 reviewer didn't do the weighing, but the weighing</p> <p>14 was done before the approval protocol, but I think</p> <p>15 with that exception your statement is correct.</p> <p>16 Q Okay.</p> <p>17 A One thing I just wanted to clarify</p> <p>18 because I'm not sure I was clear on before. When</p> <p>19 we were talking about -- I think it was</p> <p>20 Ms. Sweet's letter, you were also asking about</p> <p>21 reliance kind of in a related thread. I just</p> <p>22 wanted to make clear that the letters C and D that</p> <p>23 have gone out were not -- those were not based on</p> <p>24 a denial related to reliance.</p> <p>25 Those were based on the reasons that we</p>	<p style="text-align: right;">Page 212</p> <p>1 were looking at earlier that was tab 15,</p> <p>2 Exhibit 15 from the Jones deposition and the</p> <p>3 denial letter starts at page 51 of that document.</p> <p>4 A Sorry. Is this the declaration of</p> <p>5 Eileen Connor document?</p> <p>6 Q Yes, that's right. And attached to the</p> <p>7 declaration of Eileen Connor is the affidavit of</p> <p>8 Theresa Sweet and attached to that is the denial</p> <p>9 letter near the end of the document.</p> <p>10 A Got it. Okay.</p> <p>11 Q Okay. So looking down on the third</p> <p>12 page of the denial letter, which is page 53 of</p> <p>13 this document overall, there's a heading, What if</p> <p>14 I do not agree with this decision.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And it continues on the next page, In</p> <p>18 your request for reconsideration, please provide</p> <p>19 the following information, and there's a list of</p> <p>20 three things to include in the reconsideration</p> <p>21 application.</p> <p>22 Do you see that?</p> <p>23 A I do.</p> <p>24 Q Okay. Can you read item 2 on that</p> <p>25 list, please?</p>
<p style="text-align: right;">Page 211</p> <p>1 just talked about. Either a failure to state a</p> <p>2 claim in the sense that they said, you know, I</p> <p>3 couldn't transfer my credits, but they didn't say</p> <p>4 that they -- you know, that there was a</p> <p>5 misrepresentation.</p> <p>6 That kind of thing is the failure to</p> <p>7 state a claim that would be reflected in what went</p> <p>8 out for the C and D category.</p> <p>9 MS. ELLIS: Okay. I think we've been</p> <p>10 going for a while with the exception for our tech</p> <p>11 breaks, so let's take a real five-minute break</p> <p>12 here if that's all right.</p> <p>13 THE WITNESS: Great.</p> <p>14 MR. MERRITT: Yes.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 MS. ELLIS: All right. Thank you.</p> <p>17 THE VIDEOGRAPHER: We are now off the</p> <p>18 record. The time is 20:21 UTC.</p> <p>19 (Recess -- 3:21 p.m.)</p> <p>20 (After recess -- 3:37 p.m.)</p> <p>21 THE VIDEOGRAPHER: We're now on the</p> <p>22 record. The time is 20:37 UTC.</p> <p>23 BY MS. ELLIS:</p> <p>24 Q Okay. So I'd like to go back to the</p> <p>25 denial letter that Theresa Sweet received that we</p>	<p style="text-align: right;">Page 213</p> <p>1 A Item 2 is, Why you believe that ED</p> <p>2 incorrectly decided your borrower defense</p> <p>3 repayment application.</p> <p>4 Q Okay. Based on reading this form D</p> <p>5 denial letter, what basis would a borrower have to</p> <p>6 assert that ED incorrectly decided her borrower</p> <p>7 defense application?</p> <p>8 A Which claim, I guess, is she requesting</p> <p>9 reconsideration on?</p> <p>10 Q Well, let's start theoretically with</p> <p>11 Allegation 1, Employment Prospects.</p> <p>12 A So failure to state a legal claim. I'm</p> <p>13 sorry. Can you repeat your question?</p> <p>14 Q I guess I'll -- I can rephrase. How</p> <p>15 would the borrower know what failure to state a</p> <p>16 legal claim means in this context?</p> <p>17 A I don't really have an answer to that.</p> <p>18 I don't know.</p> <p>19 Q Is there a standard reconsideration</p> <p>20 form that a borrower can fill out?</p> <p>21 A Not currently. There's a whole process</p> <p>22 that has to happen for forms that collect data</p> <p>23 from borrowers, so that was something that was</p> <p>24 discussed a while back. We've actually expanded</p> <p>25 the reconsideration process beyond what the</p>



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<p style="text-align: right;">Page 214</p> <p>1 regulation requires because under the 2016</p> <p>2 regulation, you can only -- well, you can seek</p> <p>3 reconsideration if you have new evidence that</p> <p>4 wasn't considered in connection with your</p> <p>5 application.</p> <p>6 I had already advocated for having a</p> <p>7 reconsideration process, period, going back to the</p> <p>8 beginning of time, but in particular I think with</p> <p>9 respect to the pace that we're working on these</p> <p>10 adjudications now, we wanted to make sure that we</p> <p>11 had a mechanism for correcting any mistakes that</p> <p>12 we made.</p> <p>13 So -- so we've actually got a more</p> <p>14 expansive reconsideration. You know, it's more</p> <p>15 expansive in terms of who can -- who can seek it.</p> <p>16 You know, to the extent that these</p> <p>17 letters maybe aren't perfect and could provide</p> <p>18 better information, I don't know what the borrower</p> <p>19 would look to in particular, but, you know,</p> <p>20 certainly if they -- on that one if she, you know,</p> <p>21 articulated her claim more fully -- sometimes we</p> <p>22 get very short statements in the allegations, and</p> <p>23 if she gave more information that perhaps could</p> <p>24 lead to a different result.</p> <p>25 We do have a lot of applications that</p>	<p style="text-align: right;">Page 216</p> <p>1 had. I don't know.</p> <p>2 But, you know, certainly, if they have</p> <p>3 evidence that they didn't provide that wasn't with</p> <p>4 their application, then that would be something</p> <p>5 that would be helpful to do. But it could just</p> <p>6 be, you know, identifying evidence that may be</p> <p>7 available elsewhere, too, because we may not know</p> <p>8 about it.</p> <p>9 Q Okay. But if a -- if a borrower were</p> <p>10 to resubmit the same evidence they submitted the</p> <p>11 first time but with a more fulsome explanation,</p> <p>12 that would receive review as a -- as a complete</p> <p>13 reconsideration application?</p> <p>14 A Under current policy, yes.</p> <p>15 Q Right above this section here above,</p> <p>16 What if I do not agree with this decision, there's</p> <p>17 another section that's titled, What evidence was</p> <p>18 considered in determining my application's</p> <p>19 ineligibility.</p> <p>20 Is there any way for the borrower to</p> <p>21 find out more about what was considered under this</p> <p>22 heading beyond the description provided here?</p> <p>23 A Currently, no.</p> <p>24 Q How many people have applied for</p> <p>25 reconsideration in 2020?</p>
<p style="text-align: right;">Page 215</p> <p>1 came in before there was even an application, so</p> <p>2 they were on emails, there was a template or an</p> <p>3 entity called the Debt Collective. I think</p> <p>4 there's still an entity called the Debt Collective</p> <p>5 that had their own form. Sometimes it's just a</p> <p>6 factor of how it came in, and there could be a</p> <p>7 scenario where a borrower could provide more</p> <p>8 detail in the request for reconsideration that</p> <p>9 would result in a different result.</p> <p>10 Q Okay. But there's nothing in the</p> <p>11 denial letter that explains that to the borrower;</p> <p>12 is that correct?</p> <p>13 A I think that's fair.</p> <p>14 Q And then looking at -- back at the list</p> <p>15 of what to provide in the reconsideration</p> <p>16 application, item 3 says, Identify and provide any</p> <p>17 evidence that demonstrates why ED should approve</p> <p>18 your borrower defense to repayment under the</p> <p>19 applicable law set forth above.</p> <p>20 So do I understand from what you've</p> <p>21 just said that this isn't meant to require new</p> <p>22 evidence; it's any evidence?</p> <p>23 A It could be new evidence. It could be</p> <p>24 that the borrower referenced evidence and then</p> <p>25 didn't actually include it. Maybe they thought we</p>	<p style="text-align: right;">Page 217</p> <p>1 A I don't know if I've seen data on that</p> <p>2 lately. I believe it was at least a few thousand</p> <p>3 as of a couple of months ago, but I can't be sure</p> <p>4 of exact numbers.</p> <p>5 Q And what's the process for handling</p> <p>6 reconsideration applications when they come in?</p> <p>7 A Well, we're -- we're adding some</p> <p>8 enhancements to our -- our platform to kind of</p> <p>9 provide a -- a better mechanism to do it, but</p> <p>10 right now the -- the request comes in -- it can</p> <p>11 come in -- sometimes it's immediately in response</p> <p>12 to the email, so these notifications go out to the</p> <p>13 borrower by email, and this tells them how to</p> <p>14 respond. So sometimes shortly after they get</p> <p>15 their decision, they submit a request. Other</p> <p>16 times, they gather additional evidence and then</p> <p>17 submit it later.</p> <p>18 But it goes through our intake process</p> <p>19 kind of -- sort of along the lines of the way the</p> <p>20 application comes in, and then it's associated</p> <p>21 with their application on the review platform.</p> <p>22 Q And then how long does it take between</p> <p>23 when the application gets entered into the review</p> <p>24 platform and someone actually reviews it?</p> <p>25 A We haven't actually started the reviews</p>